No. 79-6853

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB,

Petitioner,

v.

JAMES THOMAS WEBB,

Respondent.

WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF NATIONAL CENTER ON WOMEN AND FAMILY LAW, INC., COMMUNITY ACTION FOR LEGAL SERVICES, INC., LEGAL AID SOCIETY OF ALAMEDA COUNTY, INC.

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PETITIONER

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The National Center on Women and Family Law, Inc., Community Action for Legal Services, Inc., and the Legal Aid Society of Alameda County respectfully move, pursuant to Rule 42 of this Court's Rules, for permission to file the Brief Amici Curiae in Webb v. Webb, by reason of the Amici's substantial interest in the outcome of this case and their considerable experience in litigation concerning the issues presented herein.

The National Center on Women and Family Law, Inc. is a private not-for-profit organization incorporated under the laws of the State of New York for the purpose of providing legal assistance on behalf of poor women. The Center is funded by the Legal Services Corporation, as successor to the United States Office

of Economic Opportunity (OEO), to litigate on behalf of poor women in the areas of family law and to provide technical assistance on women's issues and issues in family law to Legal Services attorneys in every state.

The Legal Aid Society of Alameda County (hereinafter, LASAC) is a private non-profit organization incorporated under the laws of the State of California for the purpose of rendering legal representation and assistance without cost to persons in Alameda County, California, who are without adequate means to employ counsel. LASAC is funded by the Legal Services Corporation. The Family Law Unit is a specialized office within LASAC which handles family law matters.

Community Action for Legal Services, Inc. is the largest civil Legal Services

program in the nation. Funded by the National Legal Services Corporation as successor to the United States Office of Economic Opportunity (OEO) legal services program, CALS provides a full range of civil legal services to indigent New York City residents who cannot afford to pay a private attorney. CALS has a full time staff of over 121 attorneys, based in 21 neighborhood offices, who provide legal assistance to more than 40,000 persons a year. CALS attorneys provide representation in all the trial courts in New York City, in the State and Federal Appellate Courts and in this Court. Approximately 20% of the cases handled by CALS neighborhood legal services offices are in the area of family law. These cases include child custody cases.

The constitutional question raised by the instant appeal, namely, whether or not the full faith and credit clause applies to child custody orders, is a question of far-reaching and fundamental importance to large numbers of indigent parents whom it is movants purpose to serve.

The Amici's lawyers have considerable experience with the constitutional issues which are presented here. The National Center on Women and Family Law lawyers have substantial knowledge and experience in the representation of poor women in interstate enforcement of child custody decrees. The Legal Aid Society of Alameda County and Community Action for Legal Services lawyers have substantial knowledge and experience in

the representation of indigents in interstate enforcement of child custody decrees. All three movants have substantial knowledge and experience in the social, emotional and economic consequences for the child and the parents as a result of the Child-Snatching relitigation caused by the failure to accord custody decrees full faith and credit.

Counsel for the Petitioner Leah Lynn Parrish Webb, consents to the filing of this Brief Amici Curiae. Counsel for the Respondent, James Thomas Webb has made a motion to withdraw as counsel and accordingly had to withdraw his consent because he is no longer in a position to consent on behalf of the Respondent.

WHEREFORE, movants pray that the attached Brief Amici Curiae be

permitted to be filed with the Court.

Dated: New York, New York
November 20, 1980

RESPECTFULLY SUBMITTED,

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INTEREST OF AMICI

The interest of Amici appears from the foregoing motion.

STATEMENT OF THE CASE

Amici rely on Petitioner's Statement of the Case.

SUMMARY OF ARGUMENT

The Uniform Child Custody Jurisdiction Act has been adopted by forty-five states to extend recognition to custody orders of sister states and thus to prevent child-snatching, limit relitigation of child custody decrees, and restrict forum-shopping. The Act protects the poorer parent from the economic burdens of custody litigation caused by child-snatching or distant forums; it is especially important for women, who usually have custody and are often poverty-stricken heads of household.

The UCCJA comports with the policies underlying the full faith and credit clause. The Act's provisions meet due process requirements; therefore custody decrees are entitled to full faith and credit. The pre-UCCJA modifiability of custody decrees has been limited by the

Act, and is not a bar to full faith and credit recognition for custody decrees.

ARGUMENT

I. THE UCCJA HAS BEEN PASSED BY 45 STATES TO PREVENT CHILD-SNATCHING AND FORUM-SHOPPING AND TO PROTECT POOR PARENTS.

This case comes before this Court because two parents and the courts of two states have contrary views regarding the appropriate custody arrangements for a seven-year-old child. That issue has been litigated three times in two states in less than two years, with differing results. The issue of whether it is better for the child to be with the mother or with the father is not before the Court. Rather, the issue that this case presents is whether Article IV, §1 of the United States Constitution mandates sister-state recognition of custody decrees. If this Court finds that custody orders are entitled to full faith and credit, other children and their parents

will not be subjected to the nightmare of multi-state custody litigation, with its frequent side-effect of child-snatching.

A. The States Have Found That Child-Snatching and Repeated Litigation Harm Children and Their Parents.

The Uniform Child Custody Jurisdiction Act (hereinafter, "UCCJA"), 9 Uniform Laws Annot. 111 (1968), which was approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association in 1968, has been adopted by 45 state legislatures. While the UCCJA is a jurisdictional statute, its primary goal is to protect children by discouraging and deterring child-snatching. Section 1(a) of the UCCJA states that one of the purposes of the Act is to:

> (5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

9 Uniform Laws Annot. 111, 117 (emph. added).

Child-snatching is neither a rare nor a harmless event. It has been estimated that between 25,000 to 100,000 snatchings occur annually.[1] As divorce rates continue at a high level, it is almost certain that the number of snatchings will increase. That so many states have adopted the UCCJA evidences a wide-spread recognition that child-snatching has become a national crisis. As the Commissioners' Prefatory Note states:

> There is growing public concern over the fact that thousands of children are shifted from state to state and from one family to another every year while their parents or other persons battle over their custody in the courts

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1. Wallop, "Pawns in the Child-snatching Game," 15 Trial 34, 35 fn. 2, 3 (1979).

of several states. Children of separated parents may live with their mother, for example, but one day the father snatches them and brings them to another state where he petitions a court to award him custody while the mother starts custody proceedings in her state; or in the case of illness of the mother the children may be cared for by grandparents in a third state, and all three parties may fight over the right to keep the children in several states. These and many similar situations constantly arise in our mobile society where family members often are scattered all over the United States and at times over other countries. A young child may have been moved to another state repeatedly before the case goes to court. When a decree has been rendered awarding custody to one of the parties, this is by no means the end of the child's migrations. It is well known that those who lose a court battle over custody are often unwilling to accept the judgment of the court. They will remove the child in an unguarded moment or fail to return him after a visit and will seek their luck in the court of a distant state where they hope to find--and often do find--a more sympathetic ear for their plea for custody.

9 Uniform Laws Annot. 111, 112.

The UCCJA is also directed to the prevention of forum-shopping and re-litigation. Section 1 of the Act states that among its other purposes are to:

> (2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;...
>
> (4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;...
>
> (6) avoid re-litigation of custody decisions of other states in this state insofar as feasible.

9 Uniform Laws Annot. 111, 117.

In their Prefatory Note, the Commissioners state that prior to the adoption of the UCCJA, custody claimants were permitted to sue in the courts of almost any state:

> [P]hysical presence of the child opens the doors of many courts to the petitions [of the person who has possession of the child] and often assures him of a decision in his favor.... [Thus,] a custody decree made in one state in one year is often overturned in another jurisdiction the next year or some years later and the child is handed over to another family, to be repeated as long as the feud continues.

9 Uniform Laws Annot. 111, 113. Such repeated litigation makes the child and the parent insecure and fearful that they will be separated from each other.

The UCCJA prevents forum-shopping by strictly defining in §3 which state has jurisdiction. Jurisdiction is based on the "home state" concept, defined in §2(5) as the state where the child has most recently resided for sis months. In addition, if there is a question about which state has jurisdiction, the courts that have been invited to take

jurisdiction are required by §6 to consult with each other to determine which state is the most appropriate to exercise jurisdiction. §6 also requires that if an action is already pending elsewhere, the court not exercise jurisdiction.

Child-snatching and unrestricted relitigation are especially harmful to children's psychological health. As the Commissioners recognized:

> The harm done to children by these experiences can hardly be over-estimated. It does not require an expert in the behavioral sciences to know that a child, especially during his early years and the years of growth, needs security and stability of environment and a continuity of affection. A child who has never been given the chance to develop a sense of belonging and whose personal attachments when beginning to form are cruelly disrupted, may well be crippled for life, to his own lasting detriment and the detriment of society.

9 Uniform Laws Annot. 111, 112. In extreme cases, the child's physical safety and even life may be endangered in the abduction, as well.[2] The abducting parent can go to extreme measures to hide the child; he or she may establish a new identity; forge records when the child enters into school; tell the child that the other parent does not love the child; or even that the other has died.[3] Some authorities believe that many abducting parents are willing to go to such lengths and to ignore the child's need for a secure life because they are motivated by hostility toward the other

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2. Noelker, "The Uniform Child Custody Jurisdiction Act: The Difficulties it presents for Poor People," 11 Clearinghouse Review 222 (1977).

3. "Child-snatching, a 'Tragedy from Start to Finish,'" 66 ABA Journal 1059 (1980).

parent who has legal custody, and not by concern or love for the child.[4] In less extreme cases, the abducting parent transports the child out of the child's home state but does not hide the child.

The parent whose child has been taken suffers very great harm. As this Court has said, a parent's right to the "care, custody, management and companionship of her minor children" are "far more precious...than property rights," May v. Anderson, 345 U.S. 528, 533, 73 S.Ct. 840, 97 L.Ed. 1221, 1226 (1952). A parent whose child is gone is psychologically very hurt. Amici have found that our poor clients -- most of them

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4. Sanders, "Prevention of Child Stealing: The Need for a National Policy," 11 Loyola of Los Angeles L. Rev. 829, 831 (1978), 66 ABA Journal, supra.

mothers--are broken-hearted to lose a child; it is almost as if the child had died. For such poor women it is especially frustrating to find that their very poverty prevents them from being able to take effective action to regain the child.

B. The UCCJA Protects Poor Parents From the High Costs of Litigation in a Foreign Forum.

The parent of a snatched child needs economic means to fight the snatching. To find a child who is hidden may require the costly services of a private investigator;[5] to litigate the custody issue in a distant forum requires travel monies for the parent and for witnesses, as well as the funds to hire a new attorney.

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5. 66 ABA Journal, supra.

All parents need to be protected from child-snatching and repeated litigation in distant forums, but mothers especially need the protection which the UCCJA affords to a legal custodian. Because in more than 90 percent of divorces custody of the children goes to the mother,[6] it is likely that fathers are a majority of child snatchers.

Mothers as a group are economically much weaker than fathers. Not all mothers work outside the home. However, women who are employed have earnings that are much smaller than those of men. In 1977, the median income of civilian women who worked full-time year-round was $8,814; the median income

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6. Weitzman and Dixon, Child Custody Awards: Legal Standards and Empirical Patterns for Child Custody, Support and Visitation After Divorce, 12 U.C. Davis

of comparable men was $15,070.[7] Thus, women's median income was only 58 percent of that of men, a ratio that has been stable for many years, id. Not only is there a great disparity between the wages of women and men, but the income of families with children which are headed by women is shockingly smaller than that of families consisting of couples with children or men with children. In 1977, 41.8 percent of all families with children which were headed by a woman had

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Footnote 6 continued.

L.Rev. 473, 484 (1979).

7. U.S. Department of Commerce, Bureau of the Census, A Statistical Portrait of Women in the United States: 1978, Current Population Reports, Special Studies Series P-23, No. 100 (hereinafter "Women"), at 74.

incomes below the poverty level;[8] in contrast, only 6.2 percent of families with children which had a male householder were below the poverty level.[9] Of Black families with children headed by women, 58.8 percent have incomes below the poverty level.[10] Not only are families consisting of mothers and children disproportionately poor, their numbers have been increasing rapidly. In the period 1970 to 1977, there was a 35 percent increase in such poor families.[11] By 1977,

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8. In 1977, the poverty threshold was $6,191 for a nonfarm family of four, U.S. Department of Commerce, Bureau of the Census, Characteristics of Population Below the Poverty Level: 1978, Current Population Reports, Series P-60, No. 124, issued July 1980, (hereinafter, Poverty"), at 1.

9. Poverty, at 82.

10. Id.

11. Women, supra, at 71.

the majority of children in families below the poverty level were in female-headed families.[12]

The parties in this case fit this pattern. James Webb's after-taxes pay was about $135 per week (Tr. 35), while Leah Webb earned a gross salary of only $87 per week (Tr. 76). Leah Webb is hard put to meet the economic burden of the snatching of her son by her ex-husband. She testified that the cost to her of appearing in court in Georgia was $142 (Tr. 98-100). In addition, she missed three days of work, for which she was not paid (Tr. 100). This brought her losses for only one day of actual hearings to $196, which amounts to half a month's pay for her. This figure did not include attorneys' fees, as she was

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12. Id.

represented by a legal services attorney without any cost to her.

The UCCJA recognizes that child-snatching and relitigation of custody awards may weigh unequally on the parties and provides in Section 11(c) that the court may order one party to pay the other's travel expenses if this would be fair. In addition, Sections 8(c) and 15(b) provide that a child-snatcher may be required to pay all the other party's expenses, including attorneys' fees. These two sections add a financial deterrent to child-snatching, and also protect the economically weaker parent from the overbearing of the economically stronger party.

More important even than the UCCJA's redistribution of the financial costs of litigation, is the fact that strict

enforcement of the UCCJA by the states has removed a prime incentive of child-snatching, that is, the ability of the snatching parent to confer jurisdiction on the courts of his own state by bringing or keeping the child there. Under the UCCJA, a court in a state where the child is in violation of a custody order (§8(b)) or of long-standing practice between the parties (§8(a)) does not have jurisdiction to hear a custody dispute; rather, the courts of the home state of the child (where child has lived for at least half a year) or which had been the home state of the child less than six months before the action was begun have jurisdiction (§3(a)(1)). These UCCJA provisions protect an economically weaker legal custodian from being required to

litigate the custody issue in the other parent's home state. In addition, they reduce the likelihood of re-litigation of custody decrees since the noncustodial parent is less likely to initiate litigation before a forum where he may have lost on the issue in the past.

II. THE FULL FAITH AND CREDIT CLAUSE OF THE U. S. CONSTITUTION APPLIES TO A VALID CHILD CUSTODY ORDER.

While lower courts have construed the language of Article IV, § 1 of the U. S. Constitution as requiring states to give recognition to child custody decrees of sister states, see, e.g., Matter of Potter, 10 Ohio Ops. 3d 214, 56 Ohio Misc. 17, 377 N.E. 2d 536 (1978), this Court has never squarely decided that question. The four cases which have reached this Court have been decided on other grounds. In those cases, the Court failed to reach the full faith and credit question either because the original order was jurisdictionally suspect, May v. Anderson, 345 U.S. 528, 97 L.Ed. 1221, 73 S. Ct. 840 (1952), or because the Court found that the initial decrees

were modifiable in the states rendering them and therefore did not need to be followed, Ford v. Ford, 371 U.S. 187, 9 L.Ed.2d. 240, 83 S.Ct. 273 (1962); Kovacs v. Brewer, 356 U.S. 604, 2 L. Ed. 2d 1008, 78 S.Ct. 963 (1958); Halvey v. Halvey, 330 U.S. 610 (1946). Developments in both statutory and case law in the last twenty years address both the due process and modifiability concerns of the Court and permit the Court to meet the full faith and credit issue squarely in this case and to hold that Article IV, § 1 now applies to custody proceedings.

A. The Availability Of Modification Does Not Deprive a Custody Decree of Full Faith and Credit, But Rather Determines the Manner in Which Full Faith and Credit Applies in Custody Cases.

At least three of the four custody cases involving the full faith and credit

issue have implied in their holdings that the full faith and credit clause applies, but that the reviewing state need only give the decree the same consideration it would have been accorded in the rendering state. "[W]hat Florida could do in modifying the decree, New York may do." Halvey v. Halvey, 330 U.S. 610, 614 (1946); accord, Kovacs v. Brewer, 366 U.S. 604, 612, 2 L.Ed.2d 1008, S.Ct. 963 (1958); Ford v. Ford, 371 U.S. 187, 9 L. Ed. 2d 240, 83 S.Ct. 273 (1962). This comports with congressional legislation under the full faith and credit clause embraced in sections 1738 and 1739 of the Judicial Code, 28 U.S.C. §§1738, 1739. Section 1738 reads in pertinent part: "Such records...so authenticated...shall have the same full faith and credit in every court and

office within the United States...as they have by law or usage in the courts ... of the State ... from which they are taken." Since the decrees at issue were modifiable in the first state, at least on a showing of a change in the circumstances of the child or the custodian, they were held to be modifiable in other states on a similar showing. This reasoning requires that now that forty-five states have adopted the UCCJA and have thereby statutorily limited their jurisdiction to modify their own custody decrees, this limitation must be respected by a corresponding limitation on the jurisdiction of another forum state. This Court should hold that the full faith and credit clause commands such a limitation.

Halvey, supra, Kovacs, supra, and

Ford, supra, were not decided simply on the basis of a jurisprudential concern with technical finality. See, e.g., Halvey, supra, 330 U.S. at 616 (Frankfurter, J., concurring). They were grounded on a much more direct concern for the welfare of the children whose custody was being decided. Underlying the Court's reasoning in these custody cases there appears to be the assumption that in order to protect children, lower courts must be free to change custody decrees when changes in the child's life require it. "A court that is called upon to determine to whom and under what circumstances custody of an infant will be granted cannot, if it is to perform its function responsibly, be bound by a decree of another court ..." (Kovacs v. Brewer, 356 U.S. 604, 612, 2 L.Ed.2d.

1008, 78 S.Ct. 963 (1958) (Frankfurter, J., dissenting) (Justice Frankfurter dissented because he believed that the forum court should be free to modify a custody order "irrespective of whether changes in circumstances are objectively provable." Id.). This view, of course, was consonant with the states' own view that custody orders had to be sufficiently fluid to respond to changes in the child's life. In a society in which divorce is almost a norm and personal mobility is widespread, the result under this state of the law has been that state courts have acted in isolation and in competition with one another, Commissioner's Prefatory Note to the UCCJA, 9 Uniform Laws Annot. 99, 113 (West 1973), and consequently, "thousands of children [have been] shifted from state to state

and from one family member to another every year while their parents or other persons battle[d] over their custody in the courts of several states."

UCCJA, supra at 111.

Application of the full faith and credit clause to custody decrees will not prevent modification of custody orders as "changed circumstances" may require. Any party with an interest in the matter can institute legal action for modification in any state where sufficient jurisdictional requisites obtain. Under Section 14 of the UCCJA, that forum, even if it is not the forum which issued the original order, may decide the action if the original forum is no longer appropriate or if it declines to exercise jurisdiction. To the extent, however, that the

original forum retains a sufficient jurisdictional connection to the parties and the child, the second forum must defer, at least in the first instance, to the original court's resolution of the "changed circumstances" issue. To require the noncustodial parent in most circumstances to institute legal action in the original forum does not make modification of previous orders impossible or unduly burdensome. An alternative rule would unfairly impose a corresponding burden on the custodial parent to defend the action.

In the present case, the most appropriate forum at the time these actions were instituted was Florida, under the UCCJA §3(a)(1)(i. , Florida Statutes §§ 61.1304, and the father had full and fair opportunity to

present evidence bearing on any "changed circumstances" in Florida. The UCCJA does not impinge on a parent's ability to seek, or on a court's ability to effect, a change in custody when such change is needed. It does, however, regulate relitigation of custody matters so as to deter child snatching and forum shopping and to prevent inconsistent court judgments. These purposes implicate important federal concerns, as well. Child kidnapping and forum shopping not only hurt the child but make a mockery of federal policies of uniformity and finality of law.

Foreseeing that the Court's decision in Halvey, supra, might lead to "an unseemly litigious competition between the states and their respective courts as well as between parents," 330 U.S.

at 620 (Rutledge, J., concurring), Justice Rutledge urged that the welfare of children should be the "controlling consideration [...] not only for disposing of [custody] cases as a matter of local policy [...] but also for formulating federal policies of full faith and credit as well as of jurisdiction and due process in relation to such dispositions." Id.

The UCCJA was developed in great part because of the failure of this Court to settle the question of whether the full faith and credit clause applies to custody decrees. The Court's reluctance to apply full faith and credit was based in part on its respect for the states' desire to protect children by ensuring that custody decrees could be modified easily when the child's cir-

cumstances changed; the Court should now take under consideration the states' concern to regulate custody relitigation for the benefit of children. The federal interest in avoiding inconsistent judgments and forum shopping will also be furthered by a holding that the full faith and credit clause applies to custody orders.

B. Particularized Jurisdictional Statutes, Which Provide That the State With the Closest Nexus to the Child Has Subject Matter Jurisdiction and Contain Stringent Notice Requirements, Meet Constitutional Due Process Standards and Fall Within The "Status" Exception of Shaffer v. Heitner.

In Shaffer v. Heitner, 433 U.S. 186 (1977), this Court exempted "particularized rules governing adjudication of status" from its holding that due process requires that personal jurisdiction be based on the "minimum contacts" rule of International Shoe

Co. v. Washington, 326 U.S. 301 (1945). 433 U.S. at n. 30.[13] The Uniform Child Custody Jurisdiction Act and the Restatement (Second) of Conflict of Laws both put forth jurisdictional rules in which the child's domicile or residence

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13. In the instant case, personal jurisdiction is not as thorny a problem as in others, even under a traditional due process analysis. Unlike the mother in May v. Anderson, supra, for example, the father here had more than enough contacts with Florida to be "sufficient" under the test of International Shoe, supra. He came to Florida for the express purpose of taking the child out of the state. Previously, he had visited the child in Florida. Mother and child had moved to Florida because both her lawyer and Mr. Webb's had advised her to put 200 miles between them so that she could avoid his harassment (Tr. 84). In addition, whereas in May extra-territorial service was not provided for in custody actions (and was at the time an unusual form of notice), in this case there is a clear statutory provision for personal extraterritorial service, and such service is common.

in the state, coupled with stringent notice requirements, are the major jurisdictional criteria. Restatement, supra §§69, 79; 9 Uniform Laws Annot. 111, 122, 131. By enacting the UCCJA, forty-five states have adopted the view that custody proceedings are child-centered rather than defendant-centered, and that they are "status proceedings" within the meaning of Shaffer v. Heitner, supra.[14] Bodenheimer and Neely-Kvarme point out that the Restatement (Second) of Conflict of Laws classifies child custody proceedings as status proceedings[15] and argue that im-

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14. See, generally, Bodenheimer and Neeley-Kvarme, Jurisdiction Over Child Custody and Adoption After Shaffer and Kulko, 12 U.C. Davis L.Rev. 229 (1979) in which the authors argue persuasively for the constitutional sufficiency of the specialized jurisdictional provisions of the Second Restatement and the UCCJA.

15. 12 U.C. Davis L.Rev. at 2401.

posing the minimum contacts rule in child custody cases would be to demand the impossible because "attempts to find a sufficient nexus between absent married or unmarried parents and a forum that is appropriate in the interest of the child would fail in many instances... As a result,...[c]ountless child disputes would remain unresolved."[16] See May v. Anderson, 345 U.S. 528, 539, 97 L.Ed. 1221, 73 S.Ct. 840 (1952) (Jackson, J., dissenting).[17] The status exception

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16. 12 U.C. Davis Law Rev. at 252.

17. In May, the Court ruled that a custody disposition rendered where one parent was neither present in, nor a domiciliary or a citizen of the rendering State, had been personally served outside the State, and had not appeared, was not entitled to full faith and credit. Of the eight Justices who participated in the case, three dissented and would have affirmed the lower court's holding that the earlier disposition commanded full faith and credit. A fourth, Justice Frankfurter, concurred

created in Shaffer has prepared the way for the Court in the case now before it to hold that jurisdictional rules embodied in the UCCJA and the Second Restatement of Conflicts and followed in this case establish a valid decree for purposes of interstate recognition and enforcement.

Footnote 17 continued

with the plurality only because in his view a custody order was never entitled to full faith and credit. 345 U.S. at 536. See Kovacs v. Brewer, 356 U.S. 604, 612, 2 L.Ed.2d 1008, 78 S.Ct. 963 (1958), (Frankfurter, J., dissenting). Justice Frankfurter made it clear, however, that the due process clause would not be offended if Ohio chose to recognize the earlier Wisconsisn decree. 345 U.S. at 535-6. Thus, of the eight Justices who participated only four opined that full faith and credit was not due because of the jurisdictional facts of the case. For a criticism of May, see May v. Anderson: Preamble to Family Law Chaos, 45 Va. L.Rev. 379 (1959).

C. The Florida Decree Is a Valid Decree Entitled to Full Faith and Credit By the Georgia Court Because the Florida Court Had Subject Matter Jurisdiction Regarding the Matter of Custody under the UCCJA and Because the Method for Service Provided in the Statute and Effectuated Upon the Non-resident Father Met the Constitutional Requirements of Notice and an Opportunity To Be Heard.

Florida, like Georgia, is a signatory of the UCCJA, which provides the bases for subject matter and personal jurisdiction in child custody cases; it is contained in Florida Statutes §§61.1302 to 61.1348. In the Florida order, which is the subject of this action, the Court found inter alia that it had jurisdiction of the parties and subject matter, and that mother and child were residents of Florida, not-withstanding the child's physical presence in Georgia. These findings and orders satisfied the requirements of the Florida Statutes and there-

fore the Florida decree was entitled to full faith and credit in Georgia.

Specifically, Florida had subject matter jurisdiction pursuant to Florida Statute §61.1304 because Florida is the "home state" of the subject child. Jurisdiction was obtained over the responding party pursuant to §61.1306, by personal delivery of the papers pursuant to §61.1314. Florida recognized the initial custody and visitation decree, and registered it as a Florida judgment. The court then implicitly reaffirmed the original custody decree, with full knowledge of the child's temporary residence in Georgia due to the father's taking and retaining the child, and, finding it to be in the child's best interests, modified the original visitation decree.[18]

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18. Note that the modification gave the

This modification was permissible under the Florida statute (§61.13), since Georgia no longer had continuing jurisdiction and Florida was now the home state of the child.[19]

Footnote 18 continued.

father more contact with the child than he had been exercising theretofore.

19. It should be noted that, unlike most states, Georgia law does not provide for continued jurisdiction in custody matters after the final decree, but requires the filing of a new proceeding. Ga. Stat. §30.127(b). See Word v. Word, 236 Ga. 100, 222 S.E.2d 382 (1976).

III. THE UCCJA'S POLICY AS ADOPTED BY 45 STATES, COMPORTS WITH THE AIMS OF THE FULL FAITH AND CREDIT CLAUSE.

The full faith and credit clause was intended to unify the separate states into one nation and to make judgments rendered in one state res judicata in sister-states:

> [T]he Framers intended it to help weld the independent states into a nation by giving judgments within the jurisdiction of the rendering state the same faith and credit in sister states as they have in the state of the original forum. The faith and credit given is not to be niggardly but generous, full. "[L]ocal policy must at times be required to give way, such 'is part of the price of our federal system.'"
>
> This constitutional purpose promotes unification, not centralization. It leaves each state with power over its own courts but binds litigants, wherever they may be in the Nation, by prior orders of other courts with jurisdiction. "One trial of an issue is enough. 'The

> principles of res judicata apply to questions of jurisdiction as well as to other issues' as well to jurisdiction of the subject matter as of the parties."

Johnson v. Muelberger, 340 U.S. 581, 584-85, 71 S. Ct. 474, 92 L.Ed. 552 (1951), citations omitted. That the UCCJA is intended to serve these same policies with regard to child custody orders is clearly set out in §1 of the Act.

§1(a)(1) and (8) of the Act expressly seek to provide for national unity: "(1) avoid jurisdictional competition and conflict between the states" and "(8) promote and expand the exchange of information..." between the various state courts. §1(a)(2) and (7) of the Act expressly seek interstate comity: "(2) promote cooperation with the courts of other states..." and "(7) facilitate the enforcement of custody decrees of other states." Finally, a

major purpose of the UCCJA is to provide for finality of litigation: "(4) discourage continuing controversies over child custody..." and "(6) avoid relitigation of custody decisions...."

The Commissioners' Prefatory Note further emphasizes the connection between policies underlying the full faith and credit clause and the UCCJA:

> The judicial trend has been toward permitting custody claimants to sue in the courts of almost any state, no matter how fleeting the contact of the child and family was with the particular state, with little regard to any conflict of law rules.... Under this state of the law the courts of the various states have acted in isolation and at times in competition with each other; often with disastrous consequences.... The Act is designed to bring some semblance of order into the existing chaos....
>
> Underlying the entire Act is the idea that to avoid the jurisdictional conflicts and

> confusions which have done serious harm to innumerable children, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants, residents and non-residents, on an equal basis and from the standpoint of the welfare of the child.

9 Uniform Laws Annot. 111, 112-114.

Section 13 of the UCCJA itself (Ga. Stat. §74-514) requires that custody decrees issued pursuant to valid jurisdictional bases by courts in sister states be recognized:

> The courts of this State shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this Act or which was made under factual circumstances meeting the jurisdictional standards of the Act....

As stated in the Commissioners' Note following §13 of the UCCJA, 9 Uniform Laws Ann. 111, 151 (1968), "This section declares as a matter of state law, that custody decrees of sister states will be recognized and enforced." Thus, requiring the states to grant full faith and credit to the custody orders of sister states would not impose any additional burden on the forty-five states that have adopted the UCCJA.

Amici have found that the operation of the UCCJA has improved enormously the situation of poor mothers and fathers who are legal custodians of their children when those children are taken away wrongfully to another state. If this Court holds that the Florida decree obtained by Leah Webb is not entitled to full faith and credit in Georgia, a shadow will be cast on the UCCJA and some,

if not all, of its effectiveness will be lost.[20] Thus, many years' work of the Commissioners on Uniform Laws and of some 45 state legislatures will be undermined.

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20. The Georgia court violated the following sections of the UCCJA: §3(a)(1), as Georgia was not the home state of the child and Florida had been within six months prior to the commencement of the action; §3(a)(2), because this cannot be used as a basis if jurisdiction under 3(a)(1) is available, as it was in this case; §3(a)(3), because the child had not been abandoned; §3(a)(4), because Florida did have jurisdiction and was willing to assume it; §6, because an action was pending in Florida when the Georgia action was begun and the Georgia Court was so informed; §8(b), because the child was wrongfully removed from Florida; and §13, because it failed to recognize the Florida order, which had been entered prior to the entry of the Georgia court's order. Although the Supreme Court of Georgia says in its decision that had the lower Georgia court dismissed the proceeding, "there could have been no resolution of the custody dispute by any Court unless a new lawsuit were brought," Webb v. Webb, 266 S.E.2d 463, 465, the Georgia Supreme Court ignored the fact that the Florida decree had resolved the custody issue and was res judicata.

And, the old state of chaos, including child-snatching and repeated re-litigation of custody, may return.

CONCLUSION

WHEREFORE, Amici request that this Court find that the Florida custody decree obtained by Leah Webb pursuant to the Uniform Child Custody Jurisdiction Act was entitled to full faith and credit in the courts of Georgia.

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